BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

GREG CONGER
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-9
Case No. 67-5194

S.S.A. No.

Prior to the issuance of Referee's Decision No. LB-8823 we assumed jurisdiction of the matter under section 1336 of the Unemployment Insurance Code. The Department of Employment had held the claimant ineligible for unemployment benefits commencing September 10, 1967 because the department concluded that the claimant was not an unemployed individual within the meaning of section 1252 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant is 21 years of age and for at least the past three years has played professional baseball.

In June 1967 the claimant signed a National Association of Professional Baseball Leagues Uniform Player Contract with the Burlington Club of the Midwest League. This club appears to be a so-called minor league club affiliated with a major league club. The significant portions of the contract which the claimant signed read as follows:

> "1. The Club hereby employs the Player to render, and the Player agrees to render, skilled services as a baseball player in connection with all games of the Club during the year 1967, including the Club's training season, the Club's exhibition games, the Club's playing season, any official series in which the Club may participate, and in any game or games in the receipts of which the Player may be entitled to share. The Player covenants

that at the time he signs this contract he is not under contract or contractual obligation to any baseball club other than the one party to this contract and that he is capable of and will perform with expertness, diligence and fidelity the service stated and such other duties as may be required of him in such employment.

"2. For the service aforesaid subsequent to the training season the Club will pay the Player at the rate of $650.00 (Six hundred and fifty dollars) per month, as follows:

"In semi-monthly installments, after the commencement of the playing season covered by this contract, unless the Club is 'abroad', in which event the amount then due shall be paid on the first day (other than a Sunday or legal holiday) after the return 'home' of the Club. The terms 'home' and 'abroad' mean, respectively, at and away from the city in which the Club has its baseball park.

"The obligation to make such payment shall begin with the commencement of the Club's playing season (or such subsequent date as the Player's service may commence) and end with the termination of the Club's scheduled playing season and any official league play-off series in which the Club participates, except that if the Player is in the service of the Club for part of the playing season only, he shall receive such proportion of the payment above stipulated as the number of days of his actual employment in any month bears to the number of days in said month.

"3. (a) The Player agrees to serve diligently and faithfully the Club, or any other Club, to which this contract may be assigned, as provided in paragraph 6 hereof; to keep himself in first-class physical condition, and to observe and comply with all requirements of the Club respecting conduct and service of its team and its players at all times, whether on or off the field; and pledges himself to the public to conform to high standards of personal conduct, fair play and good sportsmanship.

"(b) In addition to his service in connection with the active playing of baseball, the Player agrees to cooperate with the Club and participate in any and all promotional activities of the Club and its League, which, in the opinion of the Club, will promote the welfare of the Club or Professional Baseball.

"(c) The Player agrees that, while in the Club's uniform, photographs, whether still or action, and motion pictures may be taken and telecasts made, of himself, individually or with others, at such times or places as the Club may designate; that all rights therein shall belong to the Club; and that they may be used, reproduced or otherwise disseminated by the Club, directly or indirectly, in any manner the Club desires. The Player further agrees that during the playing season (as defined in paragraph 1 of this contract) he will not make public appearances, participate in radio or television programs, permit his picture to be taken, sponsor commercial products or services, or write or sponsor newspaper or magazine articles, without in each case the written consent of his Club, which, however, shall not be withheld except in the reasonable interests of the Club or Professional Baseball, provided, however, that at no time shall the Player, while in the Club's uniform, engage in any of the foregoing activities without the written consent of the Club."

Additionally, the contract prohibits the player from playing baseball otherwise than for the Burlington Club. It also prohibits him from engaging professionally in any contact sport such as boxing, wrestling, football, baseball, or hockey.

The claimant testified that at the expiration of the playing season he was free to accept any type of employment except that prohibited by the terms of the contract. As a matter of fact, from September 1966 until March 1967 the claimant was employed by an aircraft firm as a line assembler, and on October 23, 1967 he commenced work with another aircraft firm as a parts dispatcher. He was so employed at the time of the referee's hearing.

REASONS FOR DECISION

Section 1251 of the Unemployment Insurance Code provides that unemployment compensation benefits are payable to unemployed individuals who are eligible for such benefits.

Section 1252 of the code provides in part:

> "1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

In order to decide whether the claimant was, in fact, an unemployed individual at the time he filed his claim for benefits, we must of necessity interpret the terms of contract which he signed in June 1967.

Section 1641 of the California Civil Code provides as follows:

> "1641. EFFECT TO BE GIVEN TO EVERY PART OF CONTRACT. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

In Benefit Decision No. 6818 we were confronted with a similar situation in that we had to interpret the terms of the contract under which a claimant performed services as a professional baseball player. In that case the claimant had signed a Uniform Player's Contract of the National League of Professional Baseball Clubs. This contract was between the claimant and a major league baseball club and is different in several significant respects than the contract in the instant case. For example, in that contract the terms of the employment were as follows:

> "1. The Club hereby employs the Player to render, and the Player agrees to render, skilled services as a baseball player during the year 1966 including the Club's training

season, the Club's exhibition games, the Club's playing season, and the World Series (or any other official series in which the Club may participate and in any receipts of which the player may be entitled to share)."

The terms relative to the payment of the services performed under that contract read as follows:

"2. For performance of the Player's services and promises hereunder the Club will pay the Player the sum of $6,000. (Six Thousand Dollars), as follows:

"In semi-monthly installments after the commencement of the playing season covered by this contract, unless the Player is 'abroad' with the Club for the purpose of playing games, in which event the amount then due shall be paid on the first week-day after the return 'home' of the Club, the terms 'home' and 'abroad' meaning respectively at and away from the city in which the club has its baseball field.

"If a monthly rate of payment is stipulated above, it shall begin with the commencement of the Club's playing season (or such subsequent date as the Player's services may commence) and end with the termination of the Club's scheduled playing season, and shall be payable in semi-monthly installments as above provided.

"If the Player is in the service of the Club for part of the playing season only, he shall receive such proportion of the sum above mentioned, as the number of days of his actual employment in the Club's playing season bears to the number of days in said season.

"Notwithstanding the rate of payment stipulated above, the minimum rate of payment to the Player for each day of service on a Major League Club shall be at the rate of $6,000 per year; except that such minimum rate of payment shall be at the rate of $7,000 per year retroactive to the beginning of the season if the Player is on a Major League

> Club's roster on June 15 and shall be at the rate of $7,000 per year if the Player physically joins a Major League Club between June 15 and August 31. If a player physically joins a Major League Club on or after September 1, the minimum rate of payment shall be at the rate of $6,000 per year for each day of service with such Major League Club."

In the instant matter the terms of the claimant's employment with the Burlington Club provided that he would render skilled services as a baseball player "in connection with all games of the club during the year 1967." Certain differences may also be seen in the method of payment. In the instant matter the claimant was paid a monthly salary of $650 for the playing season, whereas in the cited decision the claimant's salary was computed on a yearly basis and any increment provided therefor was also computed on a yearly basis. In addition, in the cited decision the following language appears in the player's contract:

> "1. The Club's playing season for each year covered by this contract and all renewals hereof shall be as fixed by the National League of Professional Baseball Clubs, or if this contract shall be assigned to a Club in another League, then by the League of which such assignee is a member."

The contract in the cited decision also provides:

> "3. * * * (c) The Player agrees that his picture may be taken for still photographs, motion pictures or television at such times as the Club may designate and agrees that all rights in such pictures shall belong to the Club and may be used by the Club for publicity purposes in any manner it desires. The Player further agrees that during the playing season he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional baseball."

The above quoted language appears to require that the player agrees that his picture may be taken at any time during the life of the contract, whereas in the contract in the instant matter the player agrees that photographs may be taken only while he is in club uniform.

In Benefit Decision No. 6818 we concluded, after our careful consideration of the terms of the contract, that the claimant's services were contracted for on a yearly basis and during the year covered by the contract the claimant was, in fact, employed although not performing services. We do not believe the services of the claimant in the instant matter were contracted for a year. Rather, it appears from a careful evaluation of all of the clauses in the contract that services were contemplated only during the club's training season, exhibition games, and playing season and official series; that is, the services were contracted for in connection with all games of the club, not for the entire year. Therefore, we conclude that after the playing season ended and all games of the club during the year 1967 were completed, the claimant was, in fact, unemployed. We do not believe that because he agreed under the contract not to perform certain types of activity that this indicates he was employed. Granted, the contract may be interpreted as providing for a continuing employment relationship between the claimant and the club subsequent to the last game of the club but the mere existence of such an employment relationship does not preclude a finding that a claimant is unemployed (Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al. (1960), 180 A.C.A. 664, 4 Cal. Rptr. 723).

DECISION

The determination of the Department of Employment is reversed. The claimant was unemployed when he filed his initial claims for benefits and benefits are payable provided he is otherwise eligible.

Sacramento, California, April 12, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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